

Opinion No. 67-80

June 14, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Albert T. Cochran State Purchasing Agent State Capitol Building Santa Fe, New Mexico

QUESTION

The following questions relate to the Public Purchases Act which becomes effective June 16, 1967.

QUESTIONS

1. Does Subsection D of Section 10 mean that each central purchasing office must require either oral telephone or written bids on every requisition under \$ 500 which is not otherwise exempt in the Public Purchases Act?
2. With reference to subsection H of Section 10 in the event a vendor or vendors do not comply with central purchasing office requests as set forth in this section and who have not paid prescribed fee can central purchasing office send invitations to bid anyway?
3. If the answer to question 2 above is yes will this not be discrimination against those who do pay registration fee?

CONCLUSIONS

1. Yes.
2. Yes.
3. See analysis.

OPINION

{*115} ANALYSIS

Section 10 and Subsection D provides:

"Except as otherwise provided by law, all purchases of materials and services shall be made in accordance with the following provisions:

D. a single purchase involving the expenditure of less than five hundred dollars (\$ 500) may be made after requesting three oral, telephoned or written bids. If less than three

bids are received, the purchase may be made without bids but at the best obtainable price. Separate purchases of the same or similar materials or services from the same or different suppliers at the same time or about the same time where each purchase does not exceed five hundred dollars (\$ 500), but the aggregate of such purchases exceeds five hundred dollars (\$ 500), shall be considered a single purchase involving more than five hundred dollars (\$ 500)."

In our opinion this section is not subject to interpretation. The language is clear and unambiguous. In order to make a single purchase of less than five hundred dollars (\$ 500) not otherwise exempt, a request for bids must be made. It is also our opinion that the request contemplated by this section can be made by telephone or letter.

In our opinion the answer to your second question is also yes. Subsection H of Section 10 provides as follows:

"H. the central purchasing {*116} office shall send notices of proposed purchases involving the expenditure of more than five hundred dollars (\$ 500) to those responsible bidders who have signified in writing an interest in submitting bids for particular categories of materials and services and who have paid the prescribed fee for this service. The notice shall specify the time and place when bids will be received for the proposed purchase. The central purchasing office may set different fees for different categories of materials and services, but such fees shall be based upon the actual,, direct cost of giving notice to the prospective bidder. Fees collected by the central purchasing office shall be used exclusively for the purpose of giving notice to prospective bidders."

In our opinion the language of Subsection H does not prohibit a central purchasing office from sending notices of proposed purchases to prospective bidders which are not on the list for which a fee is to be charged. Subsection H is mandatory in its requirements that all those who do sign up get a notice but this mandate does not preclude notice to other parties which the purchasing agent believes might be interested in submitting a bid. If this procedure results in discrimination against those prospective bidders who have paid the registration fee, it is because the statute as enacted allows such a result. It would seem, however, that the theory behind such a provision as Subsection H is to eliminate discrimination since a party can insure that it will receive notice of proposed purchases by paying the registration fee and thus avoid a possible selective notice system by a central purchasing office.

By: Roy G. Hill

Assistant Attorney General